Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Extension of Section 272 Obligations Of Southwestern Bell Telephone Co. In The States Of Kansas and Oklahoma	WC Docket No. 02-112

COMMENTS OF VERIZON[1]

AT&T's petition repeats the same flawed arguments it has made in other proceedings that the section 272 separate affiliate requirements should not sunset for any of the Bell Operating Companies ("BOCs") until the BOCs are found not to have market power in the local exchange market in each state. But neither the Act nor the Commission's orders establish such a requirement, and it is contrary to the statutory presumption that the separate affiliate requirements will sunset in three years, as they already have in New York and in Texas. AT&T's proposal is merely an attempt to override Congress and to handicap its BOC competitors by burdening them indefinitely with the costs and operational inefficiencies of operating through separate affiliates, to the detriment of competition in the long distance market. In any event, the arguments in the petition would apply as well in any other state, and therefore should be addressed (and rejected) in the ongoing rulemaking proceeding in WC Docket No. 02-112.

[1] The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

I. This Is Not A Petition To Address Unique Circumstances; It Is A Request To Establish A Completely Unjustified Rule That AT&T Has Already Proposed In The Section 272 Sunset Rulemaking Proceeding.

The Commission should not entertain AT&T's petition, which is not based on unique circumstances in Kansas or Oklahoma or on any need for specific action there. AT&T argues that the section 272 separate affiliate requirements, which will sunset in Kansas and in Oklahoma in January 2004 (three years after SBC obtained section 271 authority), should be extended for at least an additional three years, because SBC allegedly retains market power in the local exchange market. ***See*** AT&T Petition, 2, 5-8 (filed Dec. 8, 2003). These are the same arguments that AT&T presented in its comments in the section 272 sunset rulemaking proceeding in WC Docket No. 02-112, where it advocated a general rule that would extend section 272 for three years or more for *all* BOCs in *all* states. ***See*** Comments of AT&T (filed Aug. 5, 2002); Reply Comments of AT&T (filed Aug. 26, 2002). ***See*** AT&T Petition, 6. Since AT&T is advocating a general rule that would apply everywhere, the Commission should not consider such a rule in the context of a petition against a single carrier in individual states.

II. AT&T's Argument That The Section 272 Requirements Should Be Extended Until A BOC Loses A Specific Share Of The Local Market Is Contrary To The Act.

The sole basis for AT&T's petition is its erroneous claim that Congress and the Commission have found that the section 272 separate affiliate requirements should remain in place so long as a BOC retains substantial market power in a state. AT&T Petition, 2. AT&T can point to nothing in either the Act or the legislative record to support this claim, and its only citation to a Commission order (at 4, 5) is to an introductory sentence in paragraph 13 of the *Non-Accounting Safeguards Order*, where the Commission stated that "The rules and policies adopted in this order seek to preserve the carefully crafted statutory balance to the extent possible until facilities-based alternatives to the local exchange and exchange access services of the BOCs make those safeguards no longer necessary." *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, ¶ 13 (1996). However, as the Commission explained to the Court in AT&T's appeal of the section 272 sunset for New York, this sentence was merely aspirational, and it did not reflect an intent to establish any policy standard for sunset. ***See*** Brief of the Federal Communications Commission, *AT&T v. FCC*, 34 (DC Cir. filed Oct. 20, 2003) (No. 03-1035). The sentence did not "arise in the course of discussing the agency's discretion," *Heckler v. Chaney*, 470 U.S. 821, 836 (1985), and the Commission never attempted to establish a basis for extending the three-year sunset of section 272. If the Commission had intended to establish a market power test for sunset, it would have done so explicitly. It did not. Therefore, there is nothing in the Commission's orders that alters the statutory presumption of sunset in three years.

Similarly, if Congress had wanted to adopt a measure of market power as a prerequisite to sunset of the section 272 requirements, it easily could have done so. It did not. Instead, it adopted a statutory presumption that the section 272 requirements would sunset in three years after a BOC obtained section 271 authority. Congress was aware that structural separation imposes inefficiencies and restrains competition, so it chose to employ this mechanism on only a temporary basis, relying on other safeguards that would continue after three years, including the non-discrimination requirements of sections 202 and 272(e)(1), the requirement for reasonable rates under section 201, and the requirement in section 272(e)(3) that the BOCs impute to their own long distance services the same access charges that they apply to non-affiliated interexchange carriers. Requiring the BOCs to demonstrate that they have no market power or that they have lost a specific amount of market share in the local exchange market before the separate affiliate requirement sunsets would be inconsistent with the congressional scheme.

For these reasons, AT&T's arguments (at 5–8) that SBC has not lost enough market share in Kansas and Oklahoma to allow the section 272 separate affiliate conditions to sunset are irrelevant. Neither Congress nor the Commission has established a market share test for sunset. To the contrary, sunset is automatic in three years unless the Commission extends the sunset by rule or order. ***See*** 47 U.S.C. § 272(f)(1). The facts presented by AT&T clearly demonstrate that SBC has opened its markets in Kansas and Oklahoma to competition and that competition is firmly entrenched, on both a facilities basis and through use of unbundled network elements and resale. AT&T has not established any basis to extend the burden of the separate affiliate requirements in these states.

III. Continuation of the Section 272 Separate Affiliate Requirements Is Not Necessary To Protect Against Discrimination Or Cost Misallocation.

AT&T argues (at 11-13) that the separate affiliate requirements are needed to deter discrimination and cross-subsidization of the BOCs' long distance services by their local exchange services. It is wrong. The Act provides for substantial safeguards that will continue to be effective after sunset. The continuing safeguards include the non-discrimination requirements of sections 202, 251(c), and 272(e)(1), the requirements for reasonable rates under sections 201 and 251(c), and the requirement in section 272(e)(3) that the BOCs impute to their own long distance services the same access charges that they apply to non-affiliated interexchange carriers. The provisions of sections 201, 202, 251, and 272 and the Commission's rules implementing them impose special obligations on the BOCs that are designed to ensure that they provide their competitors in both the local and interexchange markets with the services and facilities they need to provide competitive telecommunications services. In crafting the Telecommunications Act of 1996, Congress clearly viewed these provisions as sufficient to protect competition after the separate affiliate requirement sunsets in three years.

For example, section 272(e)(1) requires a BOC to fulfill requests for telephone exchange service and exchange access within a period no longer than it provides such service to itself or an affiliate. Any discrimination in favor of the BOC's retail services would have to be apparent to customers to give a BOC an unfair advantage in the marketplace, and any discrimination that was apparent to customers would also be easily detected by the BOCs' competitors as well as by the Commission.[2]

Similarly, section 272(e)(3) deals with potential cross-subsidization by requiring a BOC to impute to itself, or to its separate affiliate, the same amount for exchange access that it charges unaffiliated carriers. The BOCs would assign the same costs to their long distance operations regardless of whether or not they use separate affiliates. The Commission has a great deal of experience with cost accounting between regulated and non-regulated BOC activities. For example, in its order allowing the bundling of enhanced services, the Commission found that its cost allocation rules are effective in preventing cross-subsidization of competitive services by non-competitive services. ***See*** *CPE/Enhanced Services Bundling Order*, 16 FCC Rcd 7418, ¶¶ 38, 46

[2] AT&T argues (at 13) that a BOC could discriminate in favor of its own long distance operations by giving itself superior service, but such discrimination, which would violate section 272(e)(1), could not give the BOC an advantage unless it were apparent to customers, which ensures that it would be detected by competitors and by the Commission as well.

(2001). There is no reason to conclude that such cost accounting would be less effective for long distance services than it has been for those other, no less competitive services.

IV. The Costs Of Extending The Section 272 Separate Affiliate Requirements Clearly Outweigh Any Alleged Benefits.

Because the separate affiliate rules are not necessary to safeguard competition, there are no benefits that outweigh the substantial cost burden and marketing handicaps that these rules place on the BOCs. AT&T argues (at 14-15) that no BOC has substantiated its claims that the separate affiliate requirement imposes cost burdens. However, as Verizon demonstrated in its comments in WC Docket No. 02-112, it has incurred and will incur approximately $1 billion in capital costs and expenses to comply with these requirements over nine years. ***See*** Verizon Comments, 9-11 & Howard Declaration (filed Aug. 5, 2002). This level of economic waste cannot be justified, as it only serves to inhibit the competitive challenge to incumbent long distance carriers such as AT&T. In addition, the operational restrictions imposed by the separate affiliate requirements inhibit the BOCs' marketing efforts in the large business market, which AT&T and the other incumbent interexchange carriers continue to dominate. ***See*** Verizon Comments, 19-20 & McCully Declaration (filed Aug. 5, 2002).

AT&T argues (at 14) that Verizon has not explained how these costs were derived and has not provided any backup material. However, in Verizon's reply to comments on its petition for forbearance from the restriction on sharing operating, installation, and maintenance ("OI&M") services, Verizon provided a step-by-step explanation of its costing methodology and of the specific percentages of expenses in each category that could be saved if Verizon could provide long distance services on a non-separated basis. ***See*** Reply Comments of Verizon, CC Docket

No. 96-149, Attachment A (filed Sept. 24, 2002). In addition, Verizon has filed, subject to confidential treatment, the data that it used to provide its estimates of the historic cost burden of maintaining separate affiliates. ***See*** Verizon *Ex Parte*, WC Docket No. 02-112, CC Docket 96-149 (filed May 12, 2003).

AT&T claims (at 14) that Verizon has not taken into account the costs of re-integrating its long distance affiliates after sunset, but Verizon has already identified the potential *incremental* savings associated with eliminating the separate affiliates over time. Verizon demonstrated that it could save approximately $247 million over a four-year period if the separate affiliate requirements were eliminated, even assuming that sunk costs could not be shed. Verizon assumed that not all of the duplicative costs could be eliminated immediately, but that it would be able to phase in the cost reductions over time. ***See*** Verizon Comments, Howard Declaration, ¶ 4 (filed Aug. 5, 2002). These potential savings are significant and cannot be ignored.

Conclusion

For the foregoing reasons, the Commission should reject AT&T's petition to extend the section 272 separate affiliate requirements in Kansas and Oklahoma.

Respectfully submitted,

By: Joseph DiBella /ua

Joseph DiBella
1515 North Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3037
joseph.dibella@verizon.com

Attorney for the Verizon
telephone companies

Of Counsel
Michael E. Glover
Edward Shakin

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.